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I. LAND AND PEOPLE

A. General characteristics of the country

1. The Republic of Peru is located in the southern hemisphere; in the central western part of South America. Its coasts extend along the Pacific Ocean. Since the entire country is located in the tropical zone, its climate should be hot and humid; however, the existence of various geographical features - the Andes, high-pressure movement of air masses from the South Pacific, Humboldt Current, etc. - makes the Peruvian territory geographically complex, not only from a climatic standpoint, but also from the morphological, geological, ecological and economic standpoints.

2. Peru is located between latitudes 0° 01′ 48" south and 18° 21′ 03" south, and between longitudes 68° 39′ 27" west and 81° 19′ 34.5" west.

3. The total area of Peruvian territory is 1,285,216 square kilometres.

4. Peru is bounded to the west by the Pacific Ocean and has a coastline of 3,079.5 kilometres. It is also bounded by five South American countries: Ecuador and Colombia to the north, Brazil and Bolivia to the east, and Chile to the south. Peru respects international law and faithfully complies with the international treaties that lay down its geographical limits.

5. The Andes mountain chain, where the Inca empire, one of the three most important cultural manifestations of the region, flourished, creates three natural regions: the coastal strip, the Sierra and the jungle. The highest mountain is Nevado Huascaran, which stands 6,746 metres above sea level.

B. Ethnic and linguistic characteristics

6. Peru is a multi-ethnic country with a population of 72.62 per cent Spanish-speakers and 27.38 per cent Quechua-speakers. Within the latter figure approximately 16 per cent are bilingual (Spanish-Quechua) and 11 per cent are monolingual. The country has between 64 and 67 ethno-linguistic groups.

C. Ethnic characteristics of the indigenous population

7. The peasant and native communities in Peru number between 4,000 and 4,500. Fifty-three per cent of these communities have Quechua as their mother tongue, 41 per cent Spanish, 4 per cent Aymara and 2 per cent other languages, including native languages of the jungle.

8. Most of the indigenous communities are located in the Sierra region (98 per cent), primarily in the departments of Cuzco, Puno and Apurímac in the south and in Ayacucho, Huancavelica, Junín and Pasco in the central zone.

9. The more modernized indigenous communities are to be found in the departments of Pasco and Junín, an area noted for its mining enclaves, while the more traditional communities are located in relatively less developed areas, such as Ayacucho, Huancavelica, Apurímac, Cuzco and Puno.

10. One of the main features of the indigenous communities is farming. A very important component of this priority economic activity is communal labour performed according to the principle of reciprocity, a form of labour that goes back to the Inca period and consists of an individual and equal exchange of services or goods, including agricultural labour, assistance, lending of tools, materials, etc. It is also customary for one person to be assisted by many, with an obligation to reciprocate; this includes agricultural tasks and cooperation in various economic and social tasks.

11. The native communities are tribal groups in the jungle and jungle rim with clustered or dispersed settlements principally located in the departments of Loreto, Junín, Ucayali, Amazonas, Cuzco and Madre de Dios. They represent some 55 ethno-linguistic groups belonging to over 12 linguistic families, the largest being the Campas, Aguaruna and Shipibo-Conibo.

12. The native communities have developed agriculture as an activity to supplement hunting, fishing and gathering.

13. The native communities live in clearly identifiable ecological zones: tropical dry forest, subtropical rain forest and tropical rain forest scattered over large catchment areas. The total or partial plundering of the flora and fauna and the serious effects of drug-trafficking on the environment place the survival of these communities at serious risk.

D. Demographic characteristics

14. Population censuses in Peru date back to the Inca period. Subsequently, the first documented census was conducted by the Spaniards during the colonial era in 1548 and indicated a population of 8.3 million inhabitants in the Viceroyalty of Peru. During the Republican era, national censuses were held in 1836, 1850, 1862 and 1876. The most recent censuses at the national level were conducted in 1940, 1961, 1972, 1981 and 1993.

15. On the basis of the 1981 census, it was estimated that the population of the country would be in the vicinity of 23 million in 1993. According to the preliminary findings of the census held in July 1993, the nominally registered population was 22,128,466, with an omission rate of approximately 2 per cent.

16. The urban population is 15,567,602, while the rural population 6,560,864, representing 70.4 per cent and 29.6 per cent respectively. Of the nominally registered population in 1993, there are 11,020,409 men (49.8 per cent) and 11,108,057 women (50.2 per cent).

17. The national demographic context between 1970 and 1990 reflected the principal characteristics of the world and regional demographic expansion, with unprecedented growth that reached its highest level at the end of the 1970s. In those two decades the Peruvian population increased by 60 per cent, reaching 21,550,300, slightly less than the Latin American average, at the end of that period. This population volume was attained during a period of the Peruvian demographic process when fertility, which had previously been maintaining high levels, was beginning to decline, causing the rate of population growth to decrease.

18. The most critical stage in this process occurred between 1961 and 1970, when demographic growth speeded up considerably, attaining an annual average rate of 2.8 per cent, higher than the Latin American average, and when, in addition, the highest growth rate in the country's history (2.9 per cent for the period 1961-1966) was attained. From that time on, our population's relative growth rate fell steadily, reaching 2.1 per cent in 1990. Despite this decrease, the national population is continuing to increase by approximately 500,000 a year owing to the age structure of the population, which has a preponderance of young groups.

19. The greatest influence on these changes in the growth of the Peruvian population has undoubtedly been exerted by the variations in the birth and death rates, since emigration acquired relative significance only at the end of the period. The crude birth rate, which was 42.4 births per 1,000 inhabitants in 1970, decreased to 29.8 in 1990, a result of the drop in the global fertility rate which, until 1970, had been 6.2 children per woman, and fell to 4.9 in 1980. From that year onwards, the introduction of an explicit population policy geared towards strengthening family-planning programmes accentuated the decrease in the global fertility rate, which fell to 3.7 children per woman in 1990.

20. Mortality has been falling in recent decades; between 1970 and 1990 the frequency of deaths declined from 13.5 to 8.2 per 1,000 inhabitants. Similarly, the average life expectancy of our population grew by 9.4 years during that period, life expectancy at birth increasing from 54.0 years to 63.4 years. The infant mortality rate showed a similar trend, dropping from 116 per 1,000 live births in 1970 to 102 in 1981 and 81 in 1990.

21. It should be noted that according to recent findings of the Demographic and Family Health Survey the infant mortality trend over the past two decades has been approximately 20 per cent lower than official projections, which suggests that levels had been overestimated. Nevertheless, infant mortality in Peru is still very high and continues to be above the Latin American average.

22. Despite the decrease in fertility mentioned earlier, the age structure of the Peruvian population will continue to be relatively young for several more years, and the number of minors will continue to increase. From 1970 to 1990 the proportion of minors dropped from 44.7 per cent to 37.6 per cent, a relatively large decrease, although in absolute figures this group increased by slightly over 2 million children, which makes the demand for food, health services, education, etc. more critical.

23. The increase in the population over 65 years of age has been less marked; its proportion has remained at approximately 3.6 per cent of the total population, with slight changes, although its absolute number is increasing as a result of the decline in the death rate.

E. Socio-economic indicators

24. Along with the reduction in the proportion of minors, the percentage of people of working age rose from 51.8 in 1970 to 58.6 in 1990. In absolute figures, this meant that the labour force nearly doubled, which on average increased pressure on employment by 283,000 jobs a year.

25. In the economic areas, over the past four decades total production and per capita production have not increased significantly. From 1960 to 1990, the gross domestic product (GDP) grew at an average annual rate of 2.7 per cent, very similar to the population growth rate, but in the 1980s this growth was completely wiped out since GDP dropped to an annual average rate of -0.6 per cent. Thus, since the population grew at an average rate of 2.6 per cent between 1960 and 1990, per capita income decreased by an average of 0.1 per cent a year.

26. As a result of this demographic trend, together with the deterioration of the economic structure and its failure to meet the growing population's needs, which intensified in the 1980s, there was a steady decline in the quality of life of Peruvian families and a widespread increase in poverty. It also contributed to an increase in violence, which has had serious consequences for society as a whole.

27. Not only did the insufficient growth in national production and the population increase combine to accentuate the deterioration in the quality of life, but the distribution of national income reached its highest levels of concentration precisely in the decade of the greatest economic recession. Thus beginning in 1973, when wages attained 48.3 per cent of national income, they steadily decreased to 21.6 per cent of national income in 1988, the lowest level for the period.

28. The resulting fall in total investment, especially private investment, led - from the mid-1970s onwards - to a restriction in the expansion of modern productive activity, which could not continue to create sufficient employment.

29. Consequently, a high percentage of the population living in the cities and/or having migrated from rural areas created their own jobs, giving rise to a significant sector known as the self-employed, unstructured or informal urban sector. According to 1981 estimates, this sector represented 60 per cent of the urban labour force, and by 1990 it had grown further. The limitations on demand that restrict growth of the formal sector also affect the informal sector; consequently, the expansion of the informal sector, under the pressure of a growing labour supply due to population increase, ultimately causes the average income of its members to decline.

30. The changes in the production structure were accompanied by an urbanization process which in recent decades has oriented population distribution towards the major coastal cities, especially Metropolitan Lima. Since the 1960s, the highest population growth rate occurred during the period 1961-1970 (2.8 per cent annual average), which also had the highest urbanization rate (5.4 per cent annual average).

31. Urbanization has not occurred as a result of the industrialization process. The period in which the highest growth rate of the urban population occurred, 1961-1970, was not the period of highest growth of the industrial product or even of the total product. It was the precarious rural situation, the result of the dearth of arable land per agricultural worker, the low investment in production infrastructure and the effective loss of capital investment characterizing agriculture for several decades that drove the rural population to the cities on a massive scale, giving rise to pockets of poverty in the main cities.

32. The migration and urbanization processes of the past 20 years have been characterized by a higher rate of growth of medium-sized cities as compared with Metropolitan Lima. These cities (departmental and provincial capitals) have achieved accelerated growth through migration from the countryside and expectations of finding greater advantages in medium-sized and small cities because of the emergence and vitality of the local and regional markets that make up urban systems in several areas of the country, such as the southern Andean region (Cuzco, Sicuani, Juliaca, Puno), which is linked to a market extending into Bolivia, the northern coast (Piura, Sullana, Tumbes), the southern coast (Arequipa, Moquegua, Ilo, Tacna), and the jungle region (Pucallpa, Tarapoto, Moyobamba).

33. Another factor contributing to the migration to medium-sized cities is displacement due to the indiscriminate violence perpetrated by terrorist groups. These are forced displacements, people suddenly being obliged to leave their villages of origin or residence and their jobs.

34. Since the early 1980s, the phenomenon of violence-related displacement has affected at least two thirds of the national territory, substantially changing the demographic pattern of the regions and everyday living conditions. Although it has not yet been possible to assess this phenomenon quantitatively, some 600,000 people (120,000 families) are estimated to have been affected.

35. Recent estimates indicate that approximately 54 per cent of persons displaced during the 12 years of terrorist violence have moved within their department, while the rest have migrated elsewhere. The departments with the most displaced persons are Ayacucho, Huancavelica, Apurimac and Junín. The departments receiving the most displaced persons are Lima, Ica, Ayacucho, Apurimac and Junín. Ayacucho, the epicentre of the terrorist movement, is the department that produces the most internally displaced persons.

36. There have been three major waves of internal displacement due to violence in Peru:

(a) 1983-1986: This period coincided with the outbreak of violence by "Sendero Luminoso" in the department of Ayacucho and the Government's first attempts to check it. At that early stage displaced persons were mainly from Ayacucho and managed to find places for themselves, albeit with great difficulty, in the marginal zones of the capital cities;

(b) 1987-1989: Terrorist violence increased in response to anti-terrorist activity by the military, the first attempts at popular resistance with the formation of the self-defence "peasant patrols" and the successful initiative of self-managed grass-roots organizations opposed to violence;

(c) 1990-1992: A new migration flow arose as a result of the so-called "exemplary actions" and intensification of violence by "Sendero Luminoso".

37. The last two waves of migration have encountered conditions in the receiving areas that make permanent resettlement practically impossible. The improved security they had hoped to find in the marginal urban zones proved elusive, conditions being hardly any different from those in the countryside,

owing to the change in terrorist strategy, which aimed at greater activity in the cities during 1989-1990 and at eliminating popular resistance by means of selective murders and forcible recruitment.

38. Displacement mainly involved the Andean and indigenous peasant population (approximately 70 per cent of displaced persons), while some 20 per cent involved marginal urban sectors and rural district capitals and 10 per cent middle and high-level strata.

39. In these circumstances, women play a leading role in preserving the family and restoring prior conditions, entering the production sector, helping to organize the community for survival, etc.

40. The National Technical Commission was established in 1990 for the purpose of undertaking a general diagnosis of the problem. The document containing the preliminary diagnosis is to be brought up to date with the data from the 1993 census. On 8 December 1993, the Government established the Assistance Project for Returnees (PAR), as part of which the National Institute for Development (INADE) is currently dealing with all aspects of internal displacement and coordinating international cooperation.

41. Although international law contains mechanisms for protecting refugees, who are cross-border migrants, it is for each affected State to solve the problem of internally-displaced persons. Peru has indicated to the international community that, while the international community is examining the problem from a global standpoint and deciding which legal and political criteria the multilateral organizations will adopt in order to avert the problem, it is essential to begin emergency action in support of national efforts to prevent these internal migratory movements from becoming refugee flows.

42. It is estimated that approximately 200,000 people emigrated from Peru between 1980 and 1990.

43. Because of the years of economic crisis, it is impossible for stabilization programmes and structural reforms to relieve poverty significantly in the short term. The Government has accordingly reformulated social policy to meet the basic needs of the most vulnerable sectors of the population, without resorting to populist measures that distort market signals and impede economic growth.

44. Even when private investment, national and foreign, generates higher employment levels for the economically active population, it is unrealistic to expect the jobs created to be sufficient to satisfy the demands of the population. As a result, the current deficit in the satisfaction of basic needs will tend to continue for a long time, although it may decrease by comparison with total production or the number of persons in need.

45. The extent of the problem is reflected in the global social deficit, the difference between levels of consumption and the levels required for everyone to have access to a full basic food basket, which amounts to about US$ 15 billion annually. The urgent social deficit, for the poorer half of

the population, amounts to US$ 2.8 billion, while the food deficit of the first three deciles, where extreme poverty is concentrated, amounts to US$ 1.1 billion.

46. The indicators of support action by the State show a lamentable falling-off; State social spending has fallen steadily since 1986, chiefly in the education and health sectors. The programme of action provides for selective and focused geographic intervention, based on the poverty map, with priority being given to the creation of basic institutional capacities in health services, improvement of the quality of primary education with a view to making it universal, and the administration of justice.

47. Jobs will be created in the rural and marginal urban areas through investment in the social infrastructure and support for production linked to meeting basic needs, especially food complementarity for the sectors most at risk.

48. The Inter-Ministerial Commission for Social Affairs (CIAS), subordinate to the President of the Council of Ministers, is responsible for government policy and action for poverty relief and social support. It will have the support of the Compensation and Social Development Fund (FONCODES) and the Social Development Committees (COMDES), which will be established as ad hoc sectoral technical bodies.

49. Recent years have shown the collective organizational capacity and determination of the poor. There has been an increase in mothers' clubs, "Vasos de leche" (glasses of milk), low-income cafeterias and other neighbourhood associations which have provided manpower that is difficult to quantify and served as an invaluable foundation for a number of social-support programmes already under way such as the "Vaso de leche", "The school defends life" and various types of self-managed low-income cafeterias.

50. Active participation by the NGOs, the Church and private business has been an important factor in social development.

51. An objective analysis and understanding of the country's situation require a brief description of the explosion of terrorist violence in Peru from 1980 onwards and the emergence of the terrorist movement "Sendero Luminoso", which makes use of a complex phenomenon of structural violence dating back to the political domination and social contradictions introduced by the conquest. These have been building up and becoming more acute with time and culminated in the complete abandonment by the State of large areas of the national territory.

52. The return to the constitutional system in 1980 has been marked by a growing economic crisis, a more important role for the grass-roots organizations, an unprecedented volume of drug-trafficking and the overwhelming of obsolete State structures. Paradoxically, the new democratic regime appeared at the same time as the first terrorist action by "Sendero Luminoso".

53. In its 1989 report, the Senate Committee on Violence and Peacemaking described the various formative stages of the ideological conception of "Sendero Luminoso", from the application of Marxism-Leninism-Maoism to the

beginning of the armed struggle in 1980, developed in the so-called "thinking of Gonzalo", in which the gang's ringleader, Abimael Guzmán Reynoso, also known as "Comrade Gonzalo" or "President Gonzalo", claims to have concluded a theoretical dialectical synthesis of Marxism.

54. "Sendero Luminoso" initially presented itself to world public opinion as a group defending the peasants and indigenous communities which had been dominated and exploited by an alleged dictatorial Government in Peru. Its attacks were carefully aimed at military or government facilities, and its first victims were political authorities.

55. From 1989 onwards, however, "Sendero Luminoso" considered it had secured a so-called "strategic balance" with the State forces and decided to begin a new stage by aggravating social contradictions. It denounced the United Nations and the international human rights bodies, and non-governmental organizations engaged in promoting and safeguarding human rights, and began openly to escalate its murders of humble grass-roots leaders, priests of all denominations, foreign voluntary workers, politicians from all parties and anyone who favoured a peaceful solution and opposed violence. The world finally understood the real terrorist nature of "Sendero Luminoso" when, in horror, it saw a family apartment building in a residential area of Lima destroyed by a car bomb and its residents killed.

56. "Sendero Luminoso" has been compared by leading international political analysts with the tragic Pol Pot regime in Cambodia. Through its official journal El Diario Internacional, which is published in an important European country with the backing of libertarian theories, "Sendero Luminoso" has stated that 2 million Peruvians need to be murdered in order that a new "people's State" may be built.

57. The Tupac Amarú Revolutionary Movement (MRTA) is another terrorist group that emerged in 1984 and claims to be the armed representative of the "new left". Unlike "Sendero Luminoso", it claims to be a guerrilla group, although in practice its guerrilla tactics spill over into terrorist actions (hold-ups and abductions) and it is branded by violence.

58. Indiscriminate terrorist violence in Peru has taken a tragic toll of over 27,000 human lives.

59. The objective of the terrorist groups is to cause the greatest possible economic damage in order to paralyse the country's economic activities. Estimates of damage indicate that Peru has sustained losses in the order of US$ 21 billion, equivalent to the entire foreign debt, in addition to the resources directly assigned to efforts to combat terrorism.

60. Economic reports generally emphasize the direct costs of the destruction of production resources, electricity pylons, roads, bridges, shopping centres, factories, public institutions, banks, etc.

61. An estimate will also have to be made of the opportunity costs, i.e. the benefits not obtained because of the attacks, the flight of domestic and foreign investment, and the paralysis of tourist services, etc.

62. The introduction of a new anti-terrorism strategy aimed at organizing the people's strong rejection of terrorist methods has already had its first major successes: on 10 September 1993, the main leader of "Sendero Luminoso" was captured, together with 95 per cent of the gang's other leaders, who are now being held in high-security prisons.

63. Guzmán's arrest has halted the escalation of terrorism. For the first time, the Government is taking the initiative through a comprehensive anti-terrorism policy that includes solving hyper inflation and economic reorganization, social action by the State through the armed forces and police, efforts to combat extreme poverty and respect for human rights.

64. Another result of the Government's anti-terrorism drive has been the arrest of the main leaders of the MRTA. In addition, collusion between the MRTA and drug-traffickers, bank raids and the "war dues" collected from shopkeepers and businessmen played a role in the dismantling of this terrorist group from within; in recent years it has simply become a gang of criminals.

65. Peru has pressed for the development of legal doctrine to enable international law to cover terrorism as a violation of human rights and to initiate joint action by the international community in order to punish the offence of terrorism and eventually eradicate it altogether.

F. Cultural indicators

66. The illiteracy rate in Peru decreased sharply, from 58 per cent in 1940 to 18 per cent in 1981. During the period 1983-1991, the illiteracy rate among the population aged 15 years or over fell from 16.0 per cent to 10.7 per cent. The illiteracy rate broken down by urban or rural area and by sex indicates that the lowest rates are in urban areas, with illiteracy remaining high in rural areas, and that more women are illiterate than men.

II. GENERAL POLITICAL STRUCTURE

A. General legal framework

67. Peru is a country that has been moulded by thousands of years of pre-Colombian development and 500 years of Western culture; the Constitution accordingly defines Peru as a multi-ethnic and multicultural country.

68. The Peruvian Constitution, which was formulated by the Democratic Constituent Congress elected for that purpose and composed of 80 members, was put to a popular vote and approved by means of a referendum on 31 October 1993. The President of the Republic promulgated the Constitution on 27 December 1993. The Constitution's first provisions relate to the fundamental rights of the individual, its first article stipulating: "The defence of the individual and respect for his dignity constitute the supreme purpose of society and the State".

69. The rights of the individual established in the Constitution are covered by the main provisions of the Constitution of 1979; however, new concepts have been incorporated with a view to strengthening national integration.

70. One of the main innovations of the new Constitution is the incorporation of measures to ensure public participation, through the right of legislative initiative, the right to remove authorities and the right to participate in a referendum, the means by which the electorate approved the present text of the Constitution.

71. One of the fundamental political objectives of this Constitution has been to achieve an appropriate balance of powers, strengthening the effectiveness of the Council of Ministers and Congress itself, together with appropriate municipal decentralization.

B. System of Government

72. In Title II ("The State and the Nation") of the Constitution, article 43 stipulates that "The Republic of Peru is democratic, social, independent and sovereign. The State is an indivisible whole. Its Government is unitary, representative and decentralized, and shall be organized in accordance with the principle of the separation of powers".

73. It is further stipulated that "The power of the State originates from the people. Those who exercise it do so with the limitations and responsibilities laid down by the Constitution and the laws."

C. The Executive

1. The President and Vice-President of the Republic

74. The President of the Republic is the Head of State and personifies the Nation. In order to be elected President of the Republic, a person must be Peruvian by birth, be at least 35 years of age at the time of his candidature and enjoy the right to vote.

75. The President of the Republic is elected by direct suffrage, the candidate who obtains more than half the votes being elected. Spoiled or blank ballot papers are regarded as invalid. If none of the candidates obtains an absolute majority, a second election is held within 30 days of the proclamation of the official results between the two candidates who obtained the greatest number of votes. Together with the President of the Republic, two vice-presidents are elected in the same manner, with the same requirements and for the same term.

76. The mandate of the President is for five years; he may be re-elected for an additional period. Once a minimum period of a further constitutional term has elapsed, a former President may stand for election again subject to the same conditions.

77. The Constitution also establishes the grounds on which the presidency may be relinquished or suspended.

78. The President of the Republic has the following powers, among others:

(a) To execute and enforce the Constitution and treaties, laws and other legal provisions;

(b) To represent the State, within and outside the Republic;

(c) To direct the general policy of the Government;

(d) To watch over the internal order and external security of the Republic;

(e) To convene elections for the office of President of the Republic, elections of members of Congress, and elections for the offices of mayor, alderman and other offices stipulated by law;

(f) To convene Congress as an extraordinary legislature and, in this case, sign the convocation decree;

(g) To address messages to Congress at any time and on an obligatory basis, personally and in writing, when the first annual ordinary legislature begins its sitting.

(h) To establish regulations for laws without transgressing or distorting them, and within those limits, issue decrees and decisions;

(i) To execute and enforce the sentences and decisions of the jurisdictional organs;

(j) To execute and enforce the decisions of the National Election Board;

(k) To direct external international-relations policy, and conclude and ratify treaties;

(l) To preside over the national defence system, and organize, distribute and direct the use of the armed forces and the National Police;

(m) To adopt the necessary measures for the defence of the Republic, the integrity of the territory and the sovereignty of the State;

(n) To declare war and sign peace treaties, with the authorization of Congress;

(o) To order extraordinary measures, by means of emergency decrees having force of law, on economic and financial matters, and whenever required by the national interest, with responsibility for reporting to Congress, which may in turn amend the said emergency decrees; and

(p) To exercise such other functions of government and administration as the Constitution and laws may entrust to him.

2. The Council of Ministers

79. The Council of Ministers is composed of the Ministers of State; it has a President, who is appointed and removed from office by the President of the Republic.

80. The Council of Ministers is responsible for the administration and management of public services, each Minister being responsible for matters falling within his portfolio. Acts by the President of the Republic lacking ministerial approval are null and void.

81. The President of the Council of Ministers, who may be a minister without portfolio, has the following responsibilities:

(a) To act, after the President of the Republic, as the authorized spokesman for the Government;

(b) To coordinate the functions of the other Ministers;

(c) To approve legislative decrees, emergency decrees and the other decrees and decisions provided for by the Constitution and the law.

82. In order to be a Minister of State, a person must be Peruvian by birth, have citizenship rights and be at least 25 years of age. Members of the armed forces and the National Police may be Ministers.

83. Among the powers of the Council of Minsters, we would mention the following:

(a) To approve such bills as the President of the Republic may submit to Congress;

(b) To approve such legislative decrees and emergency decrees as may be issued by the President of the Republic, and bills, decrees and decisions as provided for by law.

(c) To discuss matters of public interest; and

(d) Other matters as entrusted to it by the Constitution and the law.

84. Any decision by the Council of Ministers requires the approval of the majority of its members and must be placed on record. Ministers may exercise no public office other than that of legislator.

85. It is considered that Ministers are individually responsible for their own acts and for the presidential acts they approve.

86. All Ministers are jointly responsible for any criminal acts or acts in violation of the Constitution or the laws perpetrated by the President of the Republic or agreed on in the Council, even if they withhold their vote, unless they resign immediately.

87. Within 30 days of taking office, the President of the Council must go before Congress, together with the other Ministers, to explain and discuss the general policy of the Government and the principal measures required for the implementation of this policy. For this purpose he submits a confidence motion.

88. The attendance of the Council of Ministers, or of any of the Ministers, is obligatory when Congress summons them in order to question them; the summons must be in writing and be submitted by not less than 15 per cent of the total number of members of Congress.

89. Congress gives effect to the political responsibility of the Council of Ministers, or of the Ministers separately, through a vote of censure or no confidence. The latter motion may be submitted only through ministerial initiative.

90. Any censure motion against the Council of Ministers, or against any of the Ministers, must be submitted by not less then 25 per cent of the total number of members of Congress. To be approved, more than half the total number of members of Congress must vote in favour of the motion. The Council of Ministers, or the Minister censured, is required to resign.

91. The President of the Council of Ministers may introduce a motion of confidence before Congress on behalf of the Council. If the confidence motion is rejected, or if the Council is censured, resigns or is dissolved by the President of the Republic, the Cabinet is in complete crisis.

92. To deal with this situation, the Peruvian Constitution has provided for the possibility that the President of the Republic may dissolve Congress if the latter has censured or expressed no confidence in two Councils of Ministers.

93. The dissolution decree must contain an announcement of elections for a new Congress, which must be held within four months of the date of dissolution, without modification of the pre-existing electoral system. Congress may not be dissolved during the final year of its mandate.

94. Once Congress has been dissolved, a Standing Commission continues to act as a temporary supervisory body; this Commission may not be dissolved. There are no other means of revoking the parliamentary mandate and Congress may not be dissolved under a state of siege.

95. The new Congress may censure the Council of Ministers or reject a motion confidence in it.

D. The Legislature

1. General provisions

96. Legislative authority lies with Congress, which consists of a single chamber and is elected for a five-year term by means of an electoral process organized in accordance with the law.

97. Congress is composed of 120 members, who, in order to be elected, must be Peruvian by birth, be at least 25 years of age and enjoy the right to vote.

98. The members of Congress represent the Nation. They are not subject to a binding mandate or to a parliamentary question procedure; they are not responsible to any authority or jurisdictional body for the opinions they express and the votes they cast in the exercise of their functions; they may not be tried or arrested without prior authorization by Congress or the Standing Commission, except in flagrante delicto.

99. The legislative mandate is non-renounceable. Disciplinary penalties imposed by Congress on representatives entailing suspension from office may not exceed 120 days of the term of the legislature.

100. Congress may initiate investigations on any subject of public interest. When a person has been summoned to appear before a commission responsible for such an investigation, his attendance is compulsory, and subject to the same constraints as those in judicial procedure.

101. The armed forces and the National Police may not enter the premises of Congress without the authorization of the President of Congress.

102. The members of the Congressional Standing Commission are elected by Congress. Their number tends to be proportionate to the number of representatives of each parliamentary group, and may not exceed 25 per cent of the total number of members of Congress.

103. Among the powers of the Standing Commission, we would note the following:

(a) To designate the Comptroller-General, on the nomination of the President of the Republic;

(b) To ratify the designation of the President of the Central Reserve Bank and of the Superintendent of Banking and Insurance;

(c) To approve supplementary credits, and transfers and credits from the budget during the parliamentary recess;

(d) To exercise such legislative powers as Congress may delegate to it. Matters relating to constitutional reform or approval of international treaties, organizational laws, the Budget Act and the General Accounts of the Republic Act may not be delegated to the Standing Commission.

104. Among the powers of Congress, we would mention the following:

(a) To enact laws and legislative decrees, and to interpret, amend or repeal existing laws and decrees;

(b) To ensure that the Constitution and the laws are respected, and to order appropriate action in order to give effect to the liability of violators;

(c) To approve treaties, in conformity with the Constitution;

(d) To approve the budget and the general accounts;

(e) To authorize borrowings, in accordance with the Constitution;

(f) To exercise the right of amnesty;

(g) To approve territorial demarcation as proposed by the Executive;

(h) To give consent to the entry of foreign troops on to the territory of the Republic, provided that national sovereignty is in no way thereby affected;

(i) To authorize the President of the Republic to leave the country.

2. The legislative function

105. Congress may enact special laws in response to the requirements of a particular situation, but not on account of differences between persons.

106. No law may have retroactive force or effect, except in criminal matters where the law favours the defendant; a law may be repealed only by another law. The Constitution does not protect abuse of the law.

107. Congress may delegate to the Executive the power to legislate, by means of legislative decrees, on a specific matter and for a particular period as established in the enabling law. These legislative decrees are subject to the same provisions as those which apply for the law. Matters that are classified as non-delegable may not be delegated to the Standing Commission.

108. No bill may be enacted without having been previously approved by the relevant consultative commission, except where provided for in the rules of procedure of Congress. Draft legislation of an urgent character submitted by the Executive has priority before Congress.

3. The formulation and promulgation of laws

109. The President of the Republic and the members of Congress have the right of initiative in the formulation of laws. The other branches of State authority, the autonomous public institutions, the municipalities and the professional associations have the same right in matters within their competence.

110. Citizens who exercise the right of initiative in accordance with the law also have this right.

E. The Judiciary

111. The power to administer justice emanates from the people and is exercised by the Judiciary through its hierarchical organs in accordance with the Constitution and the laws.

112. In any proceedings, if there is incompatibility between a constitutional provision and a legal provision, the judges give precedence to the former. Similarly, they give precedence to the legal provision over any other provision of lower rank.

113. The following are principles and rights of the jurisdictional function:

(a) Unity and exclusiveness of the jurisdictional function. The military and arbitral jurisdictions are recognized as independent jurisdictions;

(b) Independence in the exercise of the jurisdictional function. No authority may assume jurisdiction in cases pending before a jurisdictional organ or interfere in the exercise of its functions;

(c) The observance of due process and jurisdictional protection. No person may be diverted from the jurisdiction predetermined by law or subjected to proceedings other than those previously established;

(d) The public nature of proceedings, except where provided for by law. Judicial proceedings in which the defendants are public officials, those involving press crimes and those which relate to fundamental rights guaranteed by the Constitution are always public;

(e) Written substantiation of judicial decisions in all instances, except for purely procedural orders;

(f) Plurality of instances;

(g) Compensation, in the form determined by law, for miscarriages of justice in criminal trials and for arbitrary detention, without prejudice to any liability that may be determined;

(h) The principle of not failing to administer justice because of a lacuna or deficiency in the law. In such a case, the general principles of written law and customary law apply;

(i) The principle of the non-applicability by analogy of the criminal law and of provisions which restrict rights;

(j) The principle of no punishment without a trial;

(k) The application of the law most favourable to the defendant in the event of doubt or conflict between criminal laws;

(l) The principle whereby no defendant may be sentenced in absentia;

(m) The prohibition of the reopening of proceedings closed by means of an enforceable judgement;

(n) The principle whereby no defendant may be deprived of the right of defence at any stage of the proceedings;

(o) The principle that every person must be informed, immediately and in writing, of the causes of or reasons for his arrest;

(p) The principle that the administration of justice is free, and that defence is free for needy persons and for all persons in the cases specified by law;

(q) Popular participation in the appointment and removal of judges, in accordance with the law;

(r) The obligation of the Executive to extend such cooperation as may be requested of it in proceedings;

(s) Prohibition of the exercise of the judicial function by anyone who has not been appointed in the manner provided for by the Constitution or the law;

(t) The principle that every person has the right to make analyses and criticisms of judicial decisions and sentences, within the limitations of law;

(u) The right of remand and sentenced prisoners to occupy decent premises;

(v) The principle that the purpose of the prison regime is re-education, rehabilitation and reintegration of the prisoner into society.

114. The new Constitution also stipulates that the death penalty may be imposed only for the offence of treason in time of war and terrorism, in accordance with the laws and treaties to which Peru is a party.

115. The Judiciary is made up of jurisdictional organs which administer justice in the name of the Nation and by organs by which it is governed and administered.

116. The jurisdictional organs are: the Supreme Court of Justice and such other courts as may be determined by the Judiciary's organization act.

117. The President of the Supreme Court is also President of the Judiciary. The plenary Supreme Court is the highest deliberating body of the Judiciary.

118. The State guarantees to judges:

(a) Their independence; they are subject only to the Constitution and the law;

(b) Irremovability from their posts; they may not be transferred without their consent;

(c) Permanency of tenure, provided their conduct and ability are commensurate with their office;

(d) Remuneration which assures them a standard of living appropriate to their responsibility and seniority.

119. In order to be a judge of the Supreme Court of Justice, a person must:

(a) Be Peruvian by birth;

(b) Have citizenship rights;

(c) Be at least 45 years of age;

(d) Have been a Higher Court judge or senior government procurator for 10 years or have practised as a lawyer or held a university chair in a legal discipline for 15 years.

120. Lastly, it should be borne in mind that the Constitution has granted the power to exercise the judicial function, for the purposes of the execution of their customary law, to the rural and native communities with the support of the rural patrols. The law will establish the forms of coordination of this special jurisdiction with the magistrates' courts and the other instances of judicial authority.

F. The National Council of the Judiciary

121. The National Council of the Judiciary is an independent and autonomous organ which is responsible for the selection and appointment of judges and procurators, except when the latter are elected by the people.

122. Justices of the peace are appointed on the basis of a popular election, organized in accordance with the law.

123. The National Council of the Judiciary has the following functions:

(a) Appointment, on the basis of a public competitive examination and personal evaluation and with the approval of two thirds of its members, of judges and procurators at all levels;

(b) Confirmation of the appointment of judges and procurators at all levels every seven years;

(c) Enforcement of the penalty of dismissal in the case of members of the Supreme Court and Senior Government Procurators and, at the request of the Supreme Court or the Board of Senior Government Procurators, judges and procurators at all instances;

(d) Awarding to judges and procurators the official title accrediting their status.

124. The Peruvian Constitution establishes the composition of the National Council of the Judiciary and the requirements for membership.

G. The Public Prosecutor's Department

125. The Public Prosecutor's Department is autonomous and presided over by the Attorney-General of the Nation, who is elected by the Board of Senior Government Procurators.

126. The term of office of the Attorney-General of the Nation is three years, which may be extended by re-election for a further two years. The members of the Public Prosecutor's Department have the same rights and prerogatives and are subject to the same obligations as those of the Judiciary in the relevant category.

127. The Public Prosecutor's Department has the following functions:

(a) Promoting, ex officio or on application, judicial action in furtherance of legality and of the public interests safeguarded by law;

(b) Ensuring the independence of the jurisdictional organs and the proper administration of justice;

(c) Representing society in judicial proceedings;

(d) Conducting the investigation of an offence from its outset. To this end, the National Police are obliged to fulfil the mandates of the Public Prosecutor's Department within the context of their function;

(e) Instituting criminal proceedings ex officio or on application;

(f) Expressing an opinion prior to judicial decisions in the cases provided for by law;

(g) Taking the initiative in the formulation of laws, and reporting to Congress or the President of the Republic on lacunae or deficiencies in legislation.

H. The Ombudsman

128. One of the principal innovations of the new Peruvian Constitution is the institution of the Ombudsman, which is separate from the Public Prosecutor's Department.

129. The Ombudsman is autonomous, and public bodies are obliged to collaborate with him whenever he so requests.

130. The Ombudsman is elected and removed by Congress; in order to be elected Ombudsman a person must be at least 35 years of age and be a lawyer. The office carries a five-year term and is not subject to a binding mandate.

131. It is the responsibility of the Ombudsman to safeguard the constitutional and fundamental rights of the individual and the community, and to supervise fulfilment of the duties of the State administration and the performance of public services.

132. The Ombudsman submits a report to Congress once a year or whenever the latter so requests. He may take the initiative in the formulation of laws and may propose measures to facilitate the more effective performance of his functions.

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Authorities competent in human rights matters

133. In keeping with its long-standing tradition, Peru has adopted the democratic and representative system in its new Constitution. Article 43 of the Constitution establishes that the Republic of Peru is democratic and social. Its Government is unitary, representative and decentralized, and is organized in accordance with the principle of the separation of powers.

134. The Constitution assigns to the State four fundamental duties (art. 44):

(a) To defend national sovereignty;

(b) To guarantee the full realization of human rights;

(c) To protect the public from threats against its security; and

(d) To promote the general welfare, which is based on justice and on the full and balanced development of the Nation.

135. Public authority, consistent with its democratic nature, derives from the people. Article 45 of the Constitution stipulates that authority shall be exercised within the limits and with the responsibilities established by the Constitution and the laws.

136. The system of administration of justice, which is based on the principles of independence and observance of due process and on effective jurisdictional protection, is responsible for guaranteeing the rule of law and respect for fundamental rights and civil liberties. An essential guarantee, in addition to the principle of an independent, objective and impartial judiciary (Constitution, art. 146) is that judges are bound to ensure that the Constitution takes precedence over any legal provision that violates it. Another such guarantee is the principle of the hierarchy of laws (Constitution, art. 51).

137. The jurisdictional system, as established in the Constitution, is, like the European model, based on a Constitutional Court, which is an autonomous and independent constitutional supervisory body consisting of seven members elected for a five-year term. As a court of sole instance, it hears actions of unconstitutionality of legislative provisions and cases of conflict between constitutional bodies. It also hears, as the court of final instance, any court decisions that run counter to the various guarantees recognized by the Constitution (Constitution, arts. 201 and 202).

138. The essential function of the Legislature, in addition to the adoption, interpretation, amendment or repeal of laws and legislative decisions, is to ensure observance of the Constitution and the laws and to enact the necessary legislation in order to establish the liability of wrongdoers (Constitution, art. 102). In this connection, the 1993 Constitution established the Office of the Ombudsman, an autonomous body which reports annually to Congress on its activities and is responsible for safeguarding the constitutional and

fundamental rights of the individual and the community, and for monitoring the State administration's discharge of its duties and provision of public services (Constitution, arts. 161 and 162).

139. Under the rules of procedure of Congress, there is a Commission on Human Rights within the House with responsibility for protecting and guaranteeing human rights and investigating any violations of those rights. The Commission constitutes the cornerstone of the general system of protection of human rights in Peru. It should be noted that during 1993 the Commission was chaired by a distinguished opposition Member of Parliament, Mr. Roger Cáceres Veláquez, the Congressman with the greatest experience in the functioning of the Legislature and in supervisory matters.

140. The Executive has taken the step of incorporating organizations for the promotion and defence of human rights at the institutional level. Chief among them is the National Council for Human Rights (Decree-Law No. 25,993, art. 7), which is an agency of the Ministry of Justice with responsibility for promoting, coordinating and disseminating information and advising on the protection and realization of the fundamental rights of the individual (Ministerial Decision No. 076-93-JUS). Under its rules of procedure, the Council is composed of representatives of different sectors of the Government and civil society (Supreme Decree No. 038-93/JUS).

141. There are also human rights departments in every ministry and agency of the armed forces and the National Police with responsibility for ensuring respect for human rights and public freedoms. The State recognizes and respects the contribution of the non-governmental human rights organizations. There are many of them and they operate in all areas involving the protection and promotion of human rights. Chief among these is the National Human Rights Coordinating Organization, which provides a focus for and represents all the non-governmental organizations.

B. Remedies available to an individual for the protection of his fundamental rights, and compensation and rehabilitation procedures

142. Under the Title "Constitutional guarantees" in the Constitution, six constitutional guarantees or procedural instruments are established for the protection of fundamental freedoms and the supremacy of the Constitution (Constitution, art. 200).

(a) Habeas corpus proceedings may be brought in the case of any action or omission, by any authority, official or individual, which violates or threatens individual freedom or related constitutional rights;

(b) Amparo proceedings may be brought in respect of any action or omission, by any authority, official or individual, which violates or threatens other rights recognized by the Constitution. It is not applicable against legislation enacted or court decisions reached in accordance with the regular procedure. This is obvious since specific constitutional actions (indicated below) lie against the former and appeals may be lodged against the latter;

(c) Habeas data proceedings may be brought against any action or omission, by any authority, official or individual, which violates the rights established in article 2, paragraphs 5, 6 and 7, of the Constitution. The paragraphs cited guarantee, respectively, the freedom of information, that computerized services shall not supply any information that will violate the right to privacy, and the right to honour and a good reputation;

(d) An unconstitutionality action may be brought against any provisions having the rank of law which are contrary to the Constitution in form or substance, such as laws, legislative decrees, emergency decrees, treaties, congressional regulations, regional provisions and municipal ordinances;

(e) A public right of action lies against any regulations, administrative provisions and general decisions or decrees issued by any authority on the grounds that they violate the Constitution and the law;

(f) An action for compliance lies against any authority or official who refuses to comply with a legal provision or administrative act, without prejudice to statutory liability.

143. The Constitution provides that an organizational law shall govern the exercise of these guarantees and the effects of the declaration of unconstitutionality or illegality of the provisions. An unconstitutionality action is decided by the Constitutional Court in a single proceeding. The other actions are brought before the courts and may be submitted to the Constitutional Court only if the judges dismiss them. This does not apply in the case of the public right of action, which the Constitutional Court is forbidden to hear.

144. It is significant that the exercise of proceedings for habeas corpus and amparo proceedings is not suspended while states of emergency are in force. And if such actions are brought in respect of rights which have been suspended or restricted, the competent court must examine whether the restrictive measure is reasonable or proportional (Constitution, art. 200).

145. The 1979 Constitution provided for most of the constitutional actions covered by the existing Constitution, with the exception of habeas data proceedings, which are included in amparo proceedings and the action for compliance. The laws establishing regulations relating to these actions are still in force, for example Acts Nos. 23,506, 24,968 and 25,398, which essentially make provision for summary procedure and a minimum of formalities.

146. The legislation in force governing criminal procedure authorizes any citizen in the case of a publicly actionable offence to report to the Public Prosecutor's Department any criminal offence that violates fundamental rights (Code of Criminal Procedure, art. 76). Similarly, article 11 of the Public Prosecutor's Department Organization Act establishes that the Government procurator is the official empowered to bring a public criminal action; he does so automatically, upon application by an aggrieved party or through public right of action. Any citizen may make a report to the provincial procurator or the senior procurator, who is obliged, where appropriate, to begin the necessary preliminary investigation and initiate criminal proceedings before the courts.

147. The New Code of Criminal Procedure, which will take effect in May 1994, confirms this position (art. 112). Article 103, which protects collective interests reads: "Non-governmental organizations which are registered and recognized as such and whose purpose is the protection of human rights are empowered to lodge complaints, lodge an appeal in the event of refusal of an application and bring criminal indemnification proceedings with all the powers granted to them by law". The competence of non-governmental organizations to combat violations of human rights more effectively in a criminal court is thus recognized; it is important to stress that the Peruvian legal system is moving towards greater involvement of the citizen in lodging complaints and in strengthening the legal conscience of the community.

148. The new system of criminal procedure incorporates the modern accusatory model in the trial of criminal offences. It gives the Public Prosecutor's Department an active role in investigating the offence, it strengthens the right of defence and safeguards for the litigant, and it establishes a judicature whose key function is to monitor the procurator, order coercive measures and conduct the trial stage. Ordinary offences fall within the competence of the ordinary courts. Offences committed by members of the armed forces fall within the competence of the military courts provided that they involve acts directly linked to military or police duties and to the extent that they affect lawful assets which belong exclusively to the armed forces and the disciplinary regulations of the armed forces or the National Police (New Code of Criminal Procedure, art. 14).

149. The Children's and Young Persons' Code, established by Decree-Law No. 26,102, guarantees the rights and freedoms of children and young persons. Pursuant to article 75 of this Code, the Public Prosecutor's Department shall ensure compliance with its provisions. Article 76 authorizes any natural or legal person to report to the administrative or judicial bodies any failure to comply with the provisions of this law, including those which prohibit torture or cruel or degrading treatment.

150. Article 139, paragraph 7, of the Constitution guarantees compensation, in the manner prescribed by law, for miscarriages of justice in criminal proceedings and for arbitrary detention, without prejudice to any liability that may be incurred.

151. Act No. 24,973 of 28 December 1988 establishes regulations concerning compensation for miscarriage of justice and arbitrary detention. The compensation must be paid by the State through the National Compensation Fund for Miscarriages of Justice and Arbitrary Detentions, under a very summary procedure in a civil court.

152. In broad terms, the Civil Code establishes regulations concerning non-contractual liability or any illegal act, by virtue of which any person who is injured by the unlawful conduct of a public official or servant may claim the appropriate compensation from him or from the State (Civil Code, arts. 1,969 and 1,981).

C. Protection of the rights provided for in the various human rights instruments

153. The laws of Peru establish comprehensive protection of human rights. Dual protection is provided, nationally and internationally, inasmuch as Peru has ratified virtually all the international human rights instruments and is subject to monitoring by the various supervisory bodies, such as the Inter-American Commission on Human Rights and the United Nations Human Rights Committee.

154. In the first place, under the Constitution, the protection of the individual and respect for his dignity represent the ultimate aim of society and the State. Accordingly, it recognizes the following rights of the individual: the right to life, to one's identity and integrity (art. 2, para. 1); the right to equality before the law (art. 2, para. 2); the right to freedom of conscience and religion (art. 2, para. 3); the right to freedom of information (art. 2, para. 4); the right to honour and privacy (art. 2, para. 7); the right to freedom of creation (art. 2, para. 8); the right to inviolability of the home (art. 2, para. 9); the right to confidentiality and inviolability of communications and private documents (art. 2, para. 10); the right to freedom of movement (art. 2, para. 11); the right to freedom of assembly (art. 2, para. 12); the right to freedom of association (art. 2, para. 13); the right to enter freely into contracts (art. 2, para. 14); the right to freedom of work (art. 2, para. 15); the right to own property and to inherit (art. 2, para. 16); the right to participate in civic affairs (art. 2, para. 17); the right not to disclose one's beliefs (art. 2, para. 18); the right to ethnic and cultural identity (art. 2, para. 19); the right to make petitions (art. 2, para. 20); the right to one's nationality (art. 2, para. 21); the right to personal liberty and security of person (art. 2, para. 22); the right to protection of one's health (art. 7); the right to education (art. 13); the right to form and join trade unions, to collective bargaining and to strike, and to protection against arbitrary dismissal (arts. 27 and 28).

155. The Office of the Ombudsman was created pursuant to Title IV, Chapter XI, of the Constitution as an autonomous, nationwide institution. The Ombudsman is elected and removed by Congress by a two thirds majority of its total membership. He enjoys the same immunity and prerogatives as the members of Congress; his term of office is of five years' duration and he is not subject to any binding mandate (art. 161).

156. As stated earlier, the Ombudsman safeguards the constitutional and fundamental rights of the individual and the community. He submits an annual report to Congress, may take the initiative in proposing legislation and may propose measures which will enable him to discharge his duties more effectively. The Office, which was previously a part of the Public Prosecutor's Department - Office of the Attorney-General of the Nation - beyond doubt represented a step forward in the protection of human rights and demonstrates Peru's commitment to ensuring respect for them.

157. With this in mind, the Public Prosecutor's Department has set up the National Register of Detainees, for which the Office of the Special Procurator for Human Rights is responsible. While this report was being written, Congress passed a bill instituting the Register. It is intended to prevent

arbitrary arrest, the enforced disappearance of persons, torture and extrajudicial executions, and is backed by a computerized programme to monitor arrests made by the security forces. The National Register of Detainees is now in operation and has the following characteristics.

158. It originated in the Letter of Understanding signed in January 1992 by the Public Prosecutor's Department, the Ministry of the Interior, the United States Embassy, the Agency for International Development (USAID), and the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD). USAID will provide the necessary funds and technical assistance to implement the Register. It is headed by an official appointed by ILANUD.

159. The basic objective of the Register is to further the defence of human rights and the administration of justice in Peru. It is accordingly designed to ensure that police investigations of detained persons suspected of having committed ordinary or extraordinary offences are more transparent, by establishing a public system of registration of data on detainees. Initially, the main focus of its work was to register persons detained for the offence of terrorism. It is also meant to increase the capacity of the Public Prosecutor's Department to investigate complaints of violations of human rights, particularly concerning persons who have disappeared.

160. The National Register of Detainees is currently kept by the Public Prosecutor's Department and consists of two separate registers: one provided by the Ministry of Defence and the other by the national police. Both institutions are linked by computer systems to the Public Prosecutor's Department. The Register has 56 communication teams based in the various branches of the Public Prosecutor's Department (Offices of the Procurators for Human Rights) throughout the country. The number of teams will shortly be increased to 104.

161. The information received by the Public Prosecutor's Department constitutes the data bank on the situation regarding detainees in Peru, especially in the case of terrorist offences and offences against the security of the State. Once the register is functioning properly, it will be available to procurators, the Ministry of Foreign Affairs and other government departments, the International Committee of the Red Cross and other national or international institutions directly involved in human rights; and through the Procurator for Human Rights within the Public Prosecutor's Department, any citizens who need to consult it will also have access to it.

162. Similarly, under Legislative Decree No. 665 of 3 September 1991, procurators within declared emergency zones are authorized to enter police stations, prefectures, military facilities and any other detention centre in order to verify the situation of persons who have been detained or reported to have disappeared. The Public Prosecutor's Department Organization Act sanctions the authority of the procurator to visit prisons and temporary detention centres in order to hear complaints and requests by untried and convicted prisoners relating to their conditions of detention and their constitutional rights (Legislative Decree No. 052, art. 95).

163. Article 137 of the Constitution relating to states of exception provides that it is the responsibility of the President of the Republic to declare a

state of exception, with the assent of the Council of Ministers. The supreme decree setting forth that decision must stipulate precisely its duration and the area in which it will be in force, and provide for reporting to Congress or the Standing Commission

164. The Constitution recognizes two states of exception, the state of emergency and the state of siege.

(a) A state of emergency is decreed in the event of a disturbance of the peace or internal order, a disaster or serious circumstances affecting the life of the Nation. In such a situation, the rights connected with personal freedom and security, inviolability of the home and freedom of assembly and movement may be restricted or suspended. The state of emergency may not remain in force for more than 60 days, a new decree being required for any extension. The armed forces assume control of law and order if the President of the Republic so directs.

(b) A state of siege is decreed in the event of invasion, external war or civil war or imminent danger that they might arise. The fundamental rights whose exercise is not restricted or suspended must be specified. The state of siege remains in force for 45 days. When it is decreed, Congress meets ex officio; any extension requires congressional approval.

165. The regulations relating to states of exception have been established by Act No. 24,150 and Legislative Decree No. 749. When the armed forces, by decision of the Government, assume control of law and order, they do so through the Political Military Command, which is given the duties of coordinating and harmonizing actions with the public and private sectors in order to carry out peacemaking and development plans; the Command is also in charge of directing development activities in the areas under its jurisdiction, for which purpose the competent authorities place at its disposal the necessary resources, goods, services and personnel to discharge its mission. As is to be expected, the Political Military Command has under its control the members of the National Police, who carry out its instructions and orders.

166. As explained earlier, the declaration of a state of exception does not suspend the exercise of habeas corpus or amparo proceedings; and as far as the restricted and suspended rights are concerned, the judge must decide whether the measure imposing the restriction or suspension is reasonable and proportional (Constitution, art. 200). Similarly, article 8 of the Public Prosecutor's Department Organization Act stipulates that the declaration of a state of exception shall not interrupt the activity of the Department or the right of the citizens to have recourse to it or visit it.

167. The Constitution itself provides that treaties must be adopted by Congress prior to their ratification by the President of the republic if they deal, inter alia, with human rights. The denunciation of treaties requires the prior approval of Congress (Constitution, arts. 56 and 57).

168. These provisions simply reflect the intention to guarantee the full realization of fundamental rights in Peru, all the more so since, as already stated, many treaties on the subject have been ratified.

D. Way in which human rights instruments become part of national legislation

169. Article 55 of the Constitution provides that: "The treaties concluded by the State and in force form part of national law". In turn, treaties on human rights, under article 56 of the Constitution, must be approved by Congress before being ratified by the President of the Republic. If the treaty affects constitutional provisions, it must be approved by the same procedure which governs amendment of the Constitution before being ratified by the President of the Republic (Constitution, art. 57). This means that it must be approved by an absolute majority of the total number of members of Congress and ratified through a referendum, which may be dispensed with if the agreement is obtained in two successive regular legislative sessions with an affirmative vote, in each case, of more than two thirds of the members of Congress (Constitution, art. 206).

170. Under article 57 of the Constitution, the denunciation of treaties is the prerogative of the President of the Republic, but in cases where the treaties are subject to approval by Congress, such as those dealing with human rights, the denunciation must have its prior approval.

171. It is the responsibility of the President of the Republic to comply, and ensure compliance, with treaties (art. 118, para. 1), to conduct foreign policy and international relations, and to conclude and ratify treaties (art. 118, para. 11); it is the function of Congress to approve treaties in accordance with the Constitution (art. 102, para. 3). An unconstitutional action lies against any legal provisions - of a treaty, for example - which are contrary to the Constitution in form or in substance (art. 200, para. 4), in other words, when a treaty is incorporated in breach of the provisions of articles 56 and 57. A treaty may be declared unconstitutional and rejected by the Constitutional Court if it is not approved by Congress in respect of the matters covered by article 56 or if it affects constitutional provisions and, notwithstanding this, the approval procedure required by article 206 of the Constitution has not been followed.

172. Since a treaty forms part of national law and ranks as a statute so that its own constitutionality may even be challenged before the Constitutional Court, its provisions may be invoked before a judge by any person who feels that any of the rights established by the treaty have been affected. There are not many cases of jurisprudence on the subject, but it is quite clear that treaties may be invoked and directly applied by judges and administrative authorities.

173. Article 205 of the Constitution establishes that, once the internal jurisdiction has been exhausted, anyone who considers that his rights as recognized by the Constitution have been violated may appeal to the international courts or bodies constituted under treaties or agreements to which Peru is a party. It is significant in this connection that Peru accepts the jurisdiction of the Inter-American Court of Human Rights, a jurisdictional organ where a number of cases of interest to the country are currently being heard.

E. Anti-terrorist legislation and peacemaking

174. Since 1980, Peru has been subjected to a criminal offensive by the terrorist gangs "Sendero Luminoso" and the Tupac Amaru Revolutionary Movement, an offensive which has caused over 25,000 deaths and damage totalling over US$ 25 million, an amount greater than the country's external debt. In addition, thousands of families have been driven from their homes by the violence which is rife in rural areas.

175. The State has been compelled to resort to criminal legislation and the suspension of rights as permitted under states of exception in order to deal with this exceptional criminal activity. In addition, a legal and institutional framework has been designed in order to deal effectively with terrorism, which had spread throughout the country and was seriously threatening the very life of the Nation. Striking examples of this political strategy to combat crime are Decree-Laws No. 25,475 of 6 May 1992, No. 25,564 of 20 June 1992, No. 25,659 of 13 August 1992, No. 25,708 of 10 September 1992, No. 25,744 of 27 September 1992, No. 25,880 of 26 November 1992 and No. 25,499 of 16 May 1992, as well as Act No. 26,220 of 26 August 1993 and Act No. 26,248 of 25 November 1993.

176. Offences committed for terrorist purposes, which are the subject of this special legislation, are of two types: (a) ordinary terrorist offences and related offences, and (b) the offence of treason.

177. An ordinary terrorist offence consists in provoking, creating or maintaining a state of anxiety, terror or fear among the population or part of the population. It covers acts committed by any person against life, security of person, individual freedom, property, the security of buildings, roads or railways, electricity pylons or power plants. The means must involve the use of weapons, explosive materials or devices or any other means which may cause damage or serious disturbance of the peace or affect the international relations or security of society or the State.

178. On this basis, definitions have been made of a number of aggravated offences, such as membership of an armed gang, attacks on property for terrorist purposes and the use of minors in the perpetration of these offences. Included also in this definition are acts of collaboration with terrorism, such as the storing of explosives, financial assistance, or the organization of indoctrination or training courses or centres for terrorist groups. Other prohibited acts are association for purposes of terrorism, public incitement to terrorism, and advocacy of violence and terrorism.

179. These characterizations constitute a precise framework for all acts perpetrated by terrorists and enable a distinction to be made between a political opponent who uses peaceful means of dissent and a terrorist belonging to an armed gang that uses criminal methods in an attempt to destroy the State and impose a totalitarian plan on society.

180. A person is guilty of the offence of treason if he perpetrates any of the following six criminal acts:

(a) First, if he uses car bombs or weapons which cause death or create serious social danger, provided that the fundamental characteristic of causing a state of anxiety exists;

(b) Secondly, if he stores or is in possession of explosives intended for use in terrorist acts of sabotage such as those described above;

(c) Thirdly, if he is a ringleader of a terrorist organization;

(d) Fourthly, if he is a member of a murder squad set up to physically eliminate persons;

(e) Fifthly, if he supplies reports, plans or documents intended to aid and abet terrorist acts of sabotage provided for in subparagraphs (a) and (b) above;

(f) Sixthly, if as a teacher he influences his students by advocating terrorism.

181. The acts characterized as offences in the previous paragraph are also liable to the punishment prescribed for the most serious forms of terrorism. The characterization is rigid and is drawn from national experience of the behaviour of the terrorist gangs, and at the same time includes those acts which cause the greatest damage and public alarm.

182. Anti-terrorist procedural legislation seeks to render the crime control agencies efficient by providing them with the necessary tools to punish severely the perpetrators of, and accomplices in, offences committed for terrorist purposes. To that end, the powers of the police have been increased, without reducing the Public Prosecutor's powers of monitoring and supervision. Provision has been made for very rapid proceedings in order to respond quickly to charges of such offences, making it possible to determine promptly and fairly the legal status of the accused. The institution of the "faceless judges", which is Colombian in origin, and the use of military courts to try cases of treason for terrorist purposes constitute two essential parts of this system of prosecution. These steps have been taken because the terrorist gangs used to identify judges and intimidate them and, in many instances, made attempts on their lives. In addition, because of the precarious state of the judicial system, which in fact made reform essential, the perpetrators of, and accomplices in, these offences were able to escape proper punishment; consequently, given the increase in terrorist violence, it became essential to resort to the military courts in order to try terrorist acts constituting treason.

183. The Constitution establishes a maximum of 15 days' pre-trial detention by the police. Notwithstanding this, detainees do not lack a proper defence because the role of the Public Prosecutor's Department was not abolished by the anti-terrorist legislation. The Procurator no only visits detention centres and provides defence for detainees, but ensures that the police investigation does not exceed the limits imposed by the law. Every detention is reported to the Public Prosecutor and the judge, and it is from that point

that the procurators begin their work of monitoring and supervision. The Constitution prohibits torture and recognizes the right of detainees to ask for an immediate medical examination. Consequently, although the police now have greater powers, the Peruvian legal system recognizes the power of the Public Prosecutor's Department to guarantee the rights of the citizen or the entitlement of the latter to demand medical examinations in order to establish whether or not he has been subjected to improper treatment.

184. In cases of treason, Decree-Law No. 25,744 authorized the extension of police custody; that decision was incumbent not on the police themselves but on the military judge. In any event, without prejudice to the institutional guarantees specified above, the present Constitution does not permit such an extension (Constitution, art. 2, para. 24 (f)).

185. Decree-Law No. 25,475 restricts the intervention of the defence counsel to the period immediately preceding the formal statement by the accused; the enactment of this provision was due to the existence of an organization made up of lawyers having links with the terrorist gangs who would coach the detainees, threaten them and force them to adopt a certain attitude during the trial. This restriction should be taken into account when considering the work of the Procurator in protecting civil rights. The present Constitution stipulates that any person has the right to communicate personally with a defence counsel of his choosing and to be advised by him as soon as he is summoned or detained by any authority (art. 139, para. 14). Consequently, this constitutional provision takes precedence over the concern to provide maximum guarantees of the right of defence.

186. Article 6 of Decree-Law No. 25,659 established that at no stage of the police investigation or criminal proceedings could actions be brought for the protection of detainees accused of, or prosecuted for, the offences of terrorism or treason. That provision, which was intended to prevent the investigation from being disrupted by the bringing of actions for protection for a purpose other than that related to their intrinsic legal nature, has been superseded by the Flexible Procedure Act (No. 26,248), which restores the action for protection and provides for a special procedure in these cases.

187. A key element of the national peacemaking strategy is the declaration of states of emergency in those areas of the country where terrorist violence has gained the upper hand over the ordinary State control mechanisms. As already stated, military political commands have been formed in those areas for the specific purpose of restoring law and order and guaranteeing the rights of the individual.

188. The state of emergency does not weaken the powers of the Public Prosecutor's Department, whose officers are authorized to inspect military barracks in order to ascertain the situation of detainees or persons reported to have disappeared. Furthermore, the offence of enforced disappearance has been added to Peruvian criminal legislation (Decree-Law No. 25,592 of 2 July 1992), which punishes any public official or servant who deprives a person of his freedom by ordering or performing acts which result in that person's duly established disappearance. The existence of this offence demonstrates the State's determination, through legislation, to punish severely acts by officials of the security agencies which violate human rights. The statement that these acts are investigated by the Provincial

Procurator and the issue of specific guidelines on this subject (decision No. 342-92-MP/FN of 11 July 1992), as well as the keeping of the National Register of Detainees, with international cooperation, prove that such acts are not tolerated by the Government and that rather they constitute a serious retrograde step in the national peacemaking campaign.

189. The armed forces and the National Police have also issued numerous guidelines and regulations designed, first, to educate members of the armed forces and the police in respect for human rights, secondly, to avoid acts which constitute violations of civil rights, and thirdly, to punish severely the perpetrators of human rights violations.

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